36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REP. C. C. No. 221.

WILLIAM H. CHASE.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

THE COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

WILLIAM H. CHASE vs. THE UNITED STATES.

1. The petition of the claimant.
2. Documentary evidence filed in the case by claimant and transmitted to the House of Representatives.
3. Claimant's brief.
4. United States solicitor's brief.
5. Opinion of the court adverse to the claim

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 5th day of December, A. D. 1859.

SAMUEL H. HUNTINGTON,
Chief Clerk Court Claims.

UNITED STATES COURT OF CLAIMS.

WILLIAM H. CHASE *vs.* THE UNITED STATES.

To the honorable the judges of the Court of Claims:

The petition of William H. Chase, of the State of Florida, respectfully represents, that on the 7th day of July, 1838, he was commissioned as major in the corps of engineers in the army of the United States, and so continued until the 31st day of October, A. D. 1856, when he resigned his position in the army.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

That from the date of his said commission, and prior to the same, to the 16th day of February, 1856, at about which time he was appointed the military superintendent of West Point, he was in command of a separate, fixed, and permanent post in the army, and had the charge of the superintendency of the construction of the fort at Pensacola, and other forts on the Gulf of Mexico; and in pursuance of the provisions of the sixth section of the act of Congress approved August 23, 1842, (5 Stat. at Large, 573,) he was entitled, from the date of the passage of said act to the said 16th day of February, A. D. 1856, to double rations. That he has never received the benefit of the said allowance provided by said act, except for one year, which was allowed him under the construction of an act of Congress approved September 28, 1850, (9 Stat. at Large, 504.)

Your petitioner therefore claims, that in pursuance of said statutes, and other statutes of the United States, and in accordance with the decisions of the courts of the United States and the practice of the department in analogous cases, he is entitled to the allowance of double rations from the said 23d day of August, 1842, to the 16th day of February, A. D. 1856, deducting therefrom the allowance for one year during said period, and asks of your honors to inquire into said matters, and to grant him adequate relief in the premises.

He has made application to the accounting officers of the treasury and to the Secretary of War, for the allowance of his claim, but the same has been denied. He has made no application to Congress and is the sole owner of the claim.

Dated Washington, November, 1856.

WM. H. CHASE.

Report of Chief Engineer.

ENGINEER DEPARTMENT,
Washington, February 21, 1857.

SIR: In answer to the request from the Court of Claims, dated the 5th instant, and referred by you to this office, I have the honor to enclose "a statement showing the duties upon which Major William H. Chase, of the corps of engineers of the United States army, was engaged, and his respective stations from 1842 to the date of his resignation," to which is added a statement showing the periods between the times referred to for which he had leave of absence.

This department, not understanding the nature of this case of "William H. Chase *vs.* The United States," is at a loss to know what further information is desired.

I have the honor to be, very respectfully, your obedient servant,

JOSEPH G. TOTTEN,
Bt. Brig. Gen. Top. Eng.

Hon. JEFFERSON DAVIS,
Secretary of War.

Statement showing the duties upon which Major Wm. H. Chase, of the corps of engineers of the United States army, was engaged, and his respective stations from 1842 *to the date of his resignation.*

DUTIES AND STATIONS CONNECTED WITH MILITARY CONSTRUCTIONS.

From January 1, 1842, *till October* 31, 1848, stationed at Pensacola, Fla., charged with the construction and repairs of the forts in Pensacola harbor and the general supervision of all works of fortification on the Gulf of Mexico.

October 31, 1848, was relieved of his duties in Pensacola harbor by Brevet Major Beauregard, of the corps of engineers.

(*From October* 31, 1848, *till November* 27, 1848, under orders for special duty. See items marked (A) on third page.)

December 13, 1848, relieved Major Beauregard, and resumed his former station and duties, as above, at Pensacola.

From December 13, 1848, *till November* 1, 1854, continued to be stationed at Pensacola, engaged upon the duties above stated.

November 1, 1854, turned over the public property at Fort McRee, in Pensacola harbor, to Ordnance Sergeant Armstrong (temporarily), and leaving Pensacola about November 6, arrived at Key West on November 16.

November 18, 1854, assumed charge of the construction of Fort Taylor, Key West, Florida.

From November 18, 1854, *till February* 16, 1856, stationed at Key West and charged with the construction of Fort Taylor and general supervision of fortifications on the Gulf of Mexico.

February 16, 1856, relieved by Brevet Major Fraser, of the corps of engineers, of the charge of Fort Taylor.

From February 16 *till April* 18, 1856, under orders to proceed to Washington, D. C., preparatory to assuming command of the military academy and post of West Point.

April 18, 1856, under orders to proceed to West Point and relieve Brevet Major Barnard, corps of engineers, of the superintendence of the military academy and command of the post of West Point.

May 3, 1856, relieved from said assignment to duty at West Point.

From May 3 *till October* 1, 1856, on leave of absence.

October 25, 1856, date of order accepting his resignation, to take effect *October* 31, 1856.

Additional duties on which Major Chase was engaged at intervals between 1842 *and the date of his resignation, without having his stations changed.*

From January 7 *till March* 6, 1845, on duty as a member of the board of engineers in preliminary examinations of Florida reef.

From about December 23, 1845, *till April* 26, 1846, on duty with special board of engineers for examining gulf coast of Texas and Mississippi, with reference to defence.

In August and September, 1847, member of a special board to examine the site of Fort McRee.

From March 13 *till September* 13, 1848, member of the board of engineers.

A

September 13, 1848, assigned to duty as member of a commission of naval and engineer officers, to examine the coast of California, &c.

November 27, 1848, released from said assignment without having performed any duties as a member of said commission.

From April 30 *till about June* 15, 1851, member of a special board to examine Memphis navy yard.

From September 18, 1852, *till February* 15, 1853, member of board to examine passes into the Mississippi river, with a view to their improvement.

From October 6, 1852, *till April* 1, 1854, in charge of works for the improvement of Dog river bar and Choctaw pass, harbor of Mobile.

From May 23, 1853, *till March* 7, 1855, in charge of surveys of Chattahochee and Flint rivers.

From November 18, 1854, *till about February* 16, 1856, charged with construction of coal depot, under Navy Department, at Key West.

The periods between the 1*st of January*, 1842, *and the date of his resignation in* 1856, *for which Major Chase had leave of absence from his stations at Pensacola, &c., and times of absence.*

Twenty days by authority dated October 11, 1844, (left his post October 20, returned November 23.)

Twenty days by authority dated November 17, 1845, (availed himself of seven days only.)

Thirty days from October 15, 1846, extended till December 1, (returned to his post about December 7.)

Twenty days by authority dated February 23, 1847; availed himself of the leave in April and May, returning to his post about May 21.

Thirty days from January 7, 1851, (left Washington, D. C., on return to his post February 11.)

Thirty days from May 24, 1852, (left Washington, D. C., on return to his post June 26.)

From July 13 till September 18, 1852.

From July 20 till September 1, 1853; extended till October 1; extended again till November 1; returned to his post November 12.

Thirty days from May 17, 1854, (returned to his post June 10.)

Thirty days from August 6, 1854, (returned to his post September 21.)

From May 3 till September 1, 1856; extended till October 1.

October 25, 1856, date of order accepting his resignation, to take effect October 31.

I believe the foregoing statement to be a correct abstract of information to be supplied by the records of this office.

JOSEPH G. TOTTEN,
Bt. Brig. Gen. Top. Eng.

Letter from War Department.

WAR DEPARTMENT,
Washington, July 14, 1858.

SIR: As requested in your letter of the 26th ultimo, I transmit, herewith, copies of all the papers within my reach relating to Major William H. Chase's claim for double rations while in command of a separate, fixed, and permanent post, and return his petition enclosed by you

Very respectfully, your obedient servant,

W. R. DRINKARD,
Acting Secretary of War.

JOHN D. MCPHERSON, Esq.,
Deputy Solicitor Court of Claims.

Letter from Major Chase.

WASHINGTON, *May* 2, 1856.

SIR: At the suggestion of the 2d Comptroller I enclose herewith an account for double rations, allowed to engineer officers under the act of September 28, 1850, first session thirty-first Congress, and under the decision of the 2d Comptroller, dated September 10, 1852, with the request that after auditing the account it may be sent to the 2d Comptroller for his final decision.

I am, very respectfully, your obedient servant,

WILLIAM H. CHASE,
Major of Engineers.

To R. J. ATKINSON, Esq.,
Third Auditor of the Treasury, Washington.

Account of Major Chase.

The United States to Major W. H. Chase, U. S. Corps of Engineers, DR.

Double rations, commanding Fort Barrancas, Florida, from July 1, 1851, to November 1, 1854—1,023 days, at 4 rations per day, 4,092 rations, at 20 cents per ration..	$818 40
Double rations, commanding Fort Taylor, Florida, from November 18, 1854, to February 15, 1856—389 days, at 4 rations per day, 1,556 rations, at 20 cents per ration..	311 20
	$1,129 60

I hereby certify that the foregoing account is accurate and just; that I have not received pay, nor drawn rations, forage, or clothing in kind, or received money in lieu of any part thereof, for any part

of the time therein charged; that I actually owned and kept in service the horses, and employed the private servants for which I charge, for the whole of the time charged; and that I did not, during the term so charged, or any part thereof, keep or employ as a waiter or servant a soldier from the line of the army; that the annexed is an accurate description of my servant; that, for the whole period charged for my staff appointment, I actually and legally held the appointment, and did duty in the department; that I was the actual and only commanding officer at the double ration post charged for; and that no officer, within my knowledge, has a right to claim, or does claim, for said services, for any part of the period charged; that for the whole time brevet pay is claimed, I was on duty, and had a command according to my brevet rank, agreeably to law and regulations; that I was actually in the command of a company for the whole time additional pay is charged; that I have not been in the performance of any staff duty for which I claim, or have received, extra compensation during the time an additional ration is charged for; that I have been in the United States army as a commissioned officer for the number of years stated in the charge for extra ration; that I am not in arrears with the United States on any account whatsoever; and that the last payment I received was from Paymaster ———, and to the ——— day of ———, 18—.

I at the same time acknowledge, that I have received of ———, paymaster, this ——— day of ———, 1856, the sum of $1,179 $\frac{60}{100}$, being the amount and in full of said account.

WILLIAM H. CHASE,
Major Engineer.

(Signed duplicate.)

Letter from Third Auditor.

TREASURY DEPARTMENT,
Third Auditor's Office, May 3, 1856.

SIR: The enclosed letter of Major William H. Chase, United States corps of engineers, with his claim of $1,129 60 for double rations for commanding forts Barrancas and Taylor, in Florida, from the 1st of July, 1851, to the 15th February, 1856, is herewith respectfully referred for the action of your office, of which Major Chase has been advised.

I am, very respectfully, your obedient servant,
ROBT. J. ATKINSON, *Auditor.*

P. CLAYTON, Esq.,
Second Auditor.

Letter from Second Auditor.

TREASURY DEPARTMENT,
Second Auditor's Office, May 7, 1856.

SIR: The claim of Major W. H. Chase, United States engineer corps, for double rations, under the act of 28th September, 1850, from

1st July, 1851, to 1st November 1854; and from the 18th of same month to 15th February, 1856, is herewith enclosed to you for your decision thereon.

Very respectfully, your obedient servant,

P. CLAYTON, *Second Auditor.*

J. M. BRODHEAD, Esq.,
Second Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, May 8, 1856.

SIR: I have received and investigated the claim of Major W. H. Chase, corps of engineers, for double rations, commencing July 1, 1851, and ending February 15, 1856.

Major Chase makes this claim under a clause in the army appropriation act for the fiscal year ending June 30, 1851, which provided for the "additional rations for the commissioned officers of engineers commanding separate and fixed or permanent posts of the army of the United States."

If it were now presented as an original question whether or not this clause granted the additional rations, without regard to the conditions prescribed by the 6th section of the act of August 23, 1842, viz: that the post should be "garrisoned with troops." I should decide it in the negative; for I cannot look upon a mere appropriation for any object as abolishing the conditions imposed by pre-existing laws for its disbursement; nor does Congress, in making an appropriation, *create, ipso facto*, an obligation to spend it.

But, in regard to the fiscal year ending on the 30th June, 1851, this question has been already adjudicated by my predecessor, Mr. Phelps; and under his decision of September 10, 1852, the allowance has been made to the officers of engineers in command of posts without troops. The abstract of this decision is stated in the printed digest (No. 227) in broader terms than the facts warranted, and would seem to imply that the appropriation in the act of September 28, 1850, was a permanent provision of law. If so, it would no doubt cover the claim of Major Chase. But neither under the original decision nor on the authority of the printed paragraph, has any such allowance been made to any engineer officer beyond the fiscal year for which the appropriation was made; nor could a wider scope be given to the law by any fair rule of construction, whatever may have been the legal effect of the appropriation for the time being, it expired with the year for which it was made.

It is not necessary to cite the action of Congress, the opinions of the Attorney General, or decisions of executive officers, as to the effect of an appropriation in authorizing payments temporarily or permanently. There is ample sanction in all for the views I have expressed, and the claim of Major Chase must of course be disallowed.

The papers are herewith returned.

I am, very respectfully, yours,

J. M. BRODHEAD, *Comptroller.*

P. CLAYTON, Esq., *Second Auditor.*

Letter from the Hon. J. A. Rockwell.

WASHINGTON, *June* 25, 1856.

SIR: I have been professionally consulted on behalf of Major W. H. Chase, as to the construction of sundry acts of Congress in relation to the subject of double rations to an officer of engineers, while commanding a separate or permanent post.

By a fair construction of the act, I think that he is clearly entitled to the amount which he claims. Such also seems to have been the construction given to the law by Mr. Phelps, the late second comptroller. The views, however, of yourself are different, as expressed in your written opinion given in the case. Under these circumstances, I would respectfully ask that the opinion of the Attorney General on the subject may be requested, and the papers be transmitted to him for that purpose, which I send herewith.

Very respectfully, your obedient servant,
JOHN A. ROCKWELL.

HON. J. M. BRODHEAD,
Second Comptroller.

Letter from the Second Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, June 30, 1856.

SIR: At the request of Mr. John A. Rockwell, acting for Major Wm. H. Chase, corps of engineers, upon whose claim I have made an adverse decision, I respectfully ask that the opinion of the Attorney General may be obtained upon the following questions:

1. Does the provision in the act of September, 28, 1850, (9 stat. 504) making an appropriation among other things for "the additional rations for the commissioned officers of engineers commanding separate and fixed or permanent posts of the army of the United States," authorize an allowance of double rations to such officers, irrespective of the condition prescribed by the sixth section of the act of August 23, 1842. (5 stat. 519,) viz: that such posts shall be garrisoned with troops?"

2. If by virtue of the appropriation in the law of September 28, 1850, engineer officers in command of posts were entitled to an allowance for double rations without regard to the condition—"garrisoned with troops" in the act of August 23, 1842, did the law of 1850 grant or continue the allowance beyond the 30th of June, 1851, no such appropriation having since been made?

I send herewith a copy of the decision of my predecessor, Mr. Phelps, in a case arising under the law of 1850, marked No. 1; a voucher presented by Major Chase for double rations as commanding a post

No. 2; a copy of my decision in Major Chase's case, marked No. 3; and the argument of Mr. Rockwell, marked No. 4.

I am, very respectfully, yours,

J. M. BRODHEAD, *Comptroller.*

HON. JEFFERSON DAVIS,
Secretary of War.

Decision of the Second Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 10, 1852.

SIR: Brevet Colonel J. R. F. Mansfield and Captain J. M. Scarritt, of the corps of engineers, are charged on the books of your office with the amount of double rations received by them; the former as commander of Fort Morgan from 1st October to 31st December, 1850, and the latter as commander of Fort Winthrop during January, 1851. From these charges they may be relieved. The act of 28th September, 1850, allows double rations to officers of engineers "commanding permanent and fixed posts." I am officially informed by the Secretary of War that these posts were of that character during the period above mentioned, and I regard the question whether a post is "*permanent*" or not as one that must always be decided by the Secretary of War, by whom they are established and discontinued. I understand the charges to have been made against these officers originally for the reason that the posts were not *garrisoned by troops*. The act above referred to does not require the posts to be garrisoned in order to entitle the officers in command to double rations. And as the allowance is expressly extended by the act to engineer officers when in command of such posts, and as officers of that corps are prohibited by the articles of war from ever commanding troops, it necessarily follows that it was the intention of Congress to give them the double rations when commanding permanent posts without garrison. Any other construction would restrict the allowance, which is expressly given, to cases which could never occur. I return all the papers connected with the subject, and am, very respectfully, yours,

E. J. PHELPS,
Comptroller.

P. CLAYTON, Esq.,
Second Auditor.

ADJUTANT GENERAL: Please report as to the nature of Major Chase's command, during the period charged in the within account.

Report of the Adjutant General.

ADJUTANT GENERAL'S OFFICE, *July* 7, 1856.

From July 1, 1851, to November 1, 1854, Major Chase is reported, on the return of his corps, as stationed at Pensacola, Florida, "super-

intending the construction of fort McRee, fort Barrancas and the barracks thereat, and with general supervision of all works on the Gulf of Mexico." From November 16, 1854, to February 16, 1856, he is reported at Key West, Florida, "in charge of construction of fort Taylor, &c." The above are separate, fixed and permanent posts.

Respectfully submitted,

S. COOPER,
Adjutant General.

Decision of the Secretary of War.

WAR DEPARTMENT, *July* 10, 1856.

The engineers engaged in superintending the construction of works of defence at permanent military posts are not under the wages of the service to be considered as commanding the posts, nor are they by the 63d article of war entitled to assume or liable to be ordered on such duty, except by the special order of the President of the United States.

There is not, therefore, such doubt as to this claim as would justify the reference asked to the Attorney General.

JEFF. DAVIS,
Secretary of War.

TREASURY DEPARTMENT,
Second Comptroller's Office, July 14, 1856.

SIR: At the request of John Rockwell, esq., acting for Major Wm. H. Chase, corps of engineers, upon whose claim for double rations while superintending the construction of fort Barrancas and fort Taylor, Florida, claiming to have been in command thereof, from 1851 to 1856, $1,129\frac{6}{100}$, I had made an adverse decision, I transmitted, on the 30th ultimo, all the papers in the case to the Secretary of War with a request that he would obtain the opinion of the Attorney General on the question involved in the claim. The Secretary of War has returned the papers with the following endorsement upon them, viz:

[Copied above.]

This decision is communicated for your information.

Very respectfully, your obedient servant,

J. M. BRODHEAD,
Comptroller.

P. CLAYTON, Esq.,
Second Auditor of the Treasury.

IN THE COURT OF CLAIMS.

WILLIAM H. CHASE *vs.* THE UNITED STATES.

Petitioner's Brief.

The petitioner was commissioned as a major in the corps of engineers in the army of the United States on the 7th July, 1838. From 1842 to the date of his resignation, which took effect on the 31st October, 1856, he performed duty and was engaged at different stations, as shown in the report of General Totten, on pages 3 and 6 of the record. During that period he received, for one year, double rations as being "in command of a separate, fixed, and permanent post." For the rest of the time the allowance of double rations has been refused, although having during most of the period a similar, and during a part of the time the *same*, command.

As there is no dispute in relation to the facts, the question is one of law, and whether Major Chase was, during the period above stated, or any portion of it, entitled to double rations beyond the amount received for the one year above referred to?

It is contended that, in order to be entitled to such rations, it must appear that he was the commandant of a permanent or fixed post, "garrisoned with troops," in accordance with the provisions of the 6th section of the act of Congress of the 23d August, 1842. (5 Stat. at Large, 513.)

To this, we apprehend, a conclusive answer is furnished by the provisions of the act of Congress of September 28, 1850, (9 Stat. at Large, 504;) but independent of that act there are strong and, as we think, sufficient reasons against that construction of the act of 1842 which would exclude Major Chase from the benefit of double rations.

The 4th section of the act of March 3, 1797, (1 Stat., 508,) prescribed "that, to the brigadier while commanding in chief, and to each officer while commanding a separate post, there shall be allowed twice the number of rations to which they would otherwise be entitled;" and by the 5th section of the act of 10th March, 1802, (2 Stat., 124,) "to the commanding officer of each separate post such additional number of rations as the President of the United States shall from time to time direct, having respect to the special circumstances of each post."

At the time of the passage of the first of these acts, the corps of engineers had not been established as a distinct corps in the army, but was established by the second of these two acts by the provisions of the 26th section. (2 Stat., 137.) Prior to the passage of these acts, the engineers were attached to and formed a part of the corps of artillery, and as such was entitled to all the advantages and emoluments of that branch of the army. In relation to these engineer officers, on the 10th April, 1806, it was provided in the Rules and Articles of War, (2 Stat., 367:) "The function of the engineer being generally confined to the most elevated branch of military science, they are not to assume, nor are they subject to be ordered upon, any duty beyond the line of their immediate profession," &c.

It thus appears that the officers belonging to this corps, belonging to "the most elevated branch of military science," could not by law be placed in the command of troops, and that, however high their rank, however important the post assigned to them, or valuable their services, such a construction is claimed to be given to the act of 1842 as would exclude them from the benefits of double rations granted to the other corps of the army.

It is contended that a just and fair view of all the legislation on this subject leads to no such results. Under the act of Congress of July 5, 1828, (3 Stat., 256,) it is provided "that the pay and emoluments of said corps (engineers) shall be the same as those allowed to the officers of the regiment of dragoons."

The act of the 2d March, 1833, (4 Stat., 652,) provides for the establishment of the regiment of dragoons, and its pay, &c., and that "the same allowances and benefits, in every respect, as are allowed to other troops constituting the present military establishment."

It is not to be presumed that the purpose of the act of Congress of 1842 was to make this invidious and unjust distinction between the engineer and other corps of the army; and that after having declared it to be a distinguished band in the public service, prevented its officers from commanding troops, and declared that they should have the same "pay and emoluments," and "the same allowances and benefits with the other troops," that the purpose was to exclude them as a body from such benefits and emoluments.

The acts of 3d March, 1797, and 16th March, 1802, were the only acts referred to in the act of the 23d August, 1842. When these acts were passed there was no engineer corps in existence, and they had only reference to the other corps of the army which had the command of troops, and which were the only officers to whom the act could apply. It is not a just and fair construction of this act that the restriction "to the commandant of each permanent and fixed post, *garrisoned with troops*," was intended only for the officers of such corps as could by law be the commandants of troops, and not to officers of the engineer corps? The construction which had been given by the highest officer of the government to the provisions of law in relation to the pay of officers of engineers holding a brevet rank and commanding a separate post, greatly strengthen the views now taken.

But, in addition to such authority, we have the opinion in support of the views now presented in an analogous case of a court of high authority.

The regulations of the army issued under the authority of law in 1826, in the 1,140th article provided: "When troops are detached to points where there is no assistant commissary of subsistence, the commanding officer of the post or detatchment may appoint an officer to do that duty, who will while acting be entitled to the pay of an assistant commissary of subsistence; but as such appointments are only made to meet the casualties of service, the officer thus appointed will not be considered on pay after he has ceased to perform the duties. Officers making such appointments will forthwith report them to the commissary general of subsistence."

Major Richard Delafield, of the engineer corps, had the charge of

the construction of military works at Fort Jackson, having of course no troops under his command, but a large number of laborers employed in the construction of the work. He performed himself the duties of assistant commissary of subsistence, and charged in his accounts the regular charge of $20 per month for the service. A suit was brought against him before the district court of the United States for the southern district of New York; this, with other claims, were interposed as a set-off. The district judge decided in favor of the allowance of the charges. He said: "The promotion of the defendant to the rank of captain, while he was rendering said service, did not alter or defeat his claim to the compensation therefor charged by him; the law of the United States, and the rules and regulations of the army on which the defendant rested his claim, were as applicable to him while acting at said post as a captain as while acting as lieutenant, and if a part of the troops at said post were military convicts or persons in the service of the United States as a part of said corps, and the supplies were issued to them as charged, the defendant was entitled to the compensation."

After an examination of the case, Judge Thompson confirmed this decision. The case was brought by writ of error to the Supreme Court, and being equally divided in opinion on the case, the decision of the court below was affirmed. This case was on the docket of the Supreme Court of the United States in 1844, and by a reference to the printed record of the case, the ground of the decision will more fully appear. (December term, 1844, No. 19.)

But in addition to this, by reference to House Doc. No. 18, 1st sess. 28th Congress, it will appear that in more than twenty instances a similar construction was given by the Treasury Department to this very regulation, and the charge of twenty dollars per month paid to officers of engineers, acting as assistant commissaries of subsistence, having *laborers*, but no troops under their command. These regulations, having been issued under the express authority of acts of Congress, had the force of law.

The same just and sound exposition of the law in relation to the same class of officers, and the same forms of expression given in the foregoing cases by the court and Treasury Department, would lead to the construction now contended for, and show that, independent of any legislation subsequent to the act of August 23, 1842, he would be entitled to double rations.

In view, however, of the act of Congress of the 28th September, 1850, (9 Stat., 504,) it would seem that there could be no doubt on the subject. That act is an appropriation bill, and in the first section is the following paragraph:

"For commutation of officers' subsistence, five hundred and fifty thousand six hundred and seventy-nine dollars, including the additional rations for commissioned officers of ordnance commanding arsenals, being fixed or permanent posts of the army of the United States, and *the additional rations for the commissioned officers of engineers commanding separate and fixed or permanent posts of the army of the United States.*"

It would seem difficult to use language more explicit or more dis-

tinctly showing that it was the understanding of Congress that "the officers of engineers commanding separate and fixed or permanent posts of the army of the United States" were entitled to "the additional rations." Was it a *gratuity* that Congress designed to grant to these officers? On the contrary, it was the most distinct and positive legislative recognition of the *legal rights* of the officers to the "additional rations." It is the more significant from the fact, that almost the very language of the act of 1842 is used, showing that it was by no inadvertence, but of set purpose, thatt his distinct and clear recognition of the legal rights of the officers was adopted. What renders the course on this occasion the more extraordinary is, that under the provisions of this law Major Chase and the other officers of the engineer corps have been allowed the rations for one year.

This clear and obvious view of the subject was taken by Mr. Comptroller Phelps, in his decision of 16th September, A. D. 1852; but the present Comptroller is of a different opinion; and it is understood that the objection now is, that, being an appropriation bill, the act had no force beyond the year for which the appropriation was made. It of course will not be contended that provisions of a general character may not be introduced into an appropriation bill, nor that such provisions are necessarily void or inoperative. Every one knows that legislation of the utmost importance, with no limitation of time, is constantly introduced into the appropriation bills; nor, on the other hand, shall I contend that there are not many provisions which are merely temporary annual provisions, which are not of a permanent character. There is no general and uniform rule on the subject, and the true interpretation of the provisions of an appropriation act is to be arrived at in the same manner as in relation to any other law.

It is very true that this particular appropriation was but for a single year; but the *terms* in which the appropriation was made were a distinct and positive construction of the act of 1842; a clear declaratory law, in perfectly unambiguous language. The *fact*, too, that such an appropriation was made, and for such a purpose, speaks in the clearest and strongest language on the subject. It was appropriated not as a *gratuity*, but as a *legal* claim; and if a legal claim, under what law? It was granted not as a *favor* to *one*, but as a *right* to all, in the payment of a *recognized well understood official duty* of a class of officers belonging to the army.

It would seem that no two minds could differ as to the force and effect of this provision, and that no argument could make the construction more clear.

But, what renders the objection to this claim the more remarkable, is the construction which has been given to other provisions in this very act, and the very section of the act under consideration.

The paragraph immediately preceding the one in question is as follows:

"For pay of the army, one million seven hundred and fifty-nine thousand eight hundred and forty-two dollars, 'provided that the pay and emoluments of the superintendent of the United States Military Academy shall in no case be less than the pay and emoluments of the professor of natural and experimental philosophy.'"

Now, this provision for the professor was not in the fulfilment of the obligations of any previous law, nor in the construction of a previous law. It might well have been considered and treated as a temporary provision for the year; but, on the contrary, it was considered as permanent, and is still in force.

Again, in the same act, there is the following provision:

"For the current expenses of the ordnance service, one hundred thousand dollars, provided that the principal assistant in the ordnance bureau of the War Department shall receive a compensation not less than that of the person employed at the foundries, under the fifth section of the act approved twenty-third of August, eighteen hundred and forty-two, from and after the date thereof."

Now, this provision is somewhat equivocal; but the assistant in the ordnance bureau properly, doubtless, to this day enjoys the benefit of the construction of this as a permanent provision, certainly for far less reason than in the present case.

But the most extraordinary matter of all is, the different course which has been taken in relation to the two classes of officers in one short paragraph, and with the same phraseology. The whole paragraph is as follows: "For commutation of officers' subsistence, five hundred and fifty thousand six hundred and seventy-nine dollars, including the additional rations for commissioned officers of ordnance commanding arsenals or armories being fixed or permanent posts of the army of the United States, and the additional rations for the commissioned officers of engineers commanding separate and fixed or permanent posts of the army of the United States."

It is thus seen that the language in relation to the engineer officers and in relation to the ordnance officers is identical; and yet since the passage of that act the ordnance officers have been decided to be entitled to double rations, and the engineers not. It is said, indeed, that the "enlisted men" of the ordnance corps are to be regarded as *troops*.

If so, what was the necessity of passing this declaratory law, and why were they not paid under the act of 1842; and *now*, if they are entitled under the act of 1842, why are they not paid the whole amount of their back pay from that time?

If the act of 1842 was sufficient, this of 1850 is unnecessary. If it was insufficient, why this provision in an appropriation bill resorted to to help it out, and how can it help it out any better in relation to ordnance officers than in relation to engineers? But there is certainly no real difference in the two classes of officers, so far as the law of 1842 is concerned.

It is, indeed, provided in the act of February 8, 1835, section two, "that the colonel or senior officer of the ordnance department is authorized to enlist for the service of that department for five years, as many master armorers, master carriage makers, master blacksmiths, artificers, armorers, blacksmiths, and laborers, as the public service, in his judgment, under the direction of the Secretary for the Department of War, may require."

Now, it certainly requires as liberal a construction to turn an arsenal with "enlisted mechanics" into a "*fort garrisoned with troops*," as it

does to the laborers engaged in the construction of a fortification under the charge of an engineer officer.

If the construction which we give of the paragraph in the appropriation bill of 1850 is sound, and amounts to a permanent recognition of the validity of the claim of the ordnance officers, that act is quite sufficient to sanction the claim of both classes of officers; but if it cannot be considered as a recognition for the one, it certainly cannot be for the other.

JOHN A. ROCKWELL,
Of Counsel for Petitioner.

IN THE COURT OF CLAIMS.

WILLIAM H. CHASE *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF ON FINAL HEARING.

Claim by an officer of the engineer corps, who was superintending the construction of forts on the Gulf of Mexico, for double rations, on the ground that he was in command of a military post.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That on the 7th of July, 1838, the claimant was commissioned a major in the corps of engineers, and so continued until he resigned, October 31, 1856.

Second. That from December 13, 1848, to November 1, 1854, he was "stationed at Pensacola, Florida, charged with the construction and repairs of the forts in Pensacola harbor, and the general supervision of all works of fortification on the Gulf of Mexico;" and from November 18, 1854, to February 16th, 1856, he was "stationed at Key West, and charged with the construction of Fort Taylor, and the general supervision of fortifications on the Gulf of Mexico."—(Gen. Totten's statement, Record. p. 4.)

Third. The claim is for double rations from July 1, 1851, to November 1, 1854, and from November 18, 1854, to February 15, 1856. (Account, Record, p. 7.)

Fourth. There is no evidence that Major Chase exercised any command of troops, or any other authority, except such as is usual when constructing fortifications and the public works.

Fifth. That the claim is based by the claimant upon the act of 1842, (5 U. S. L., 513,) and 1850, (9 U. S. L., 504,) and upon no other law. (Petition, Record, p. 3.)

LEGAL PROPOSITIONS.

FIRST. *The act of August* 23, 1842, (5 U. S. L., 513, §6,) *authorizes rations to officers commanding fixed military posts garrisoned with troops.*

This section of the act declares that rations authorized to be allowed by the act of 1797 "shall hereafter be allowed to the follow-

ing officers, and *no others:* to the major-general commanding the army, and to every officer commanding-in-chief a separate army, actually in the field; to generals commanding the eastern and western geographical divisions; to the colonels or other officers commanding military geographical departments; to the commandant of each *permanent or fixed post garrisoned with troops*, including the superintendent of the Military Academy at West Point, who is regarded as the commandant of that post."

Major Chase does not show that he was in command of a permanent or fixed "post garrisoned with troops." Such an employment as he exercised has never been held to be included and provided for under this section. And even the decision of Mr. Phelps does not rest upon this act, because he expressly puts it upon that of 1850. Major Chase did not, in fact, command a post, nor did he command a garrison of troops. He was in command as an engineer, which conferred no such authority.

The 63d Article of War (2 U. S. L., 367) prescribes some of the duties of an engineer, and shows that the President alone can give him a command outside of his usual and regular official duty. That article is as follows:

"ARTICLE 63. The functions of the engineers being generally confined to the most elevated branch of military science, they are not to assume, nor are they subject to be ordered on any duty beyond the line of their immediate profession, except by the special order of the President of the United States, but they are to receive every mark of respect to which their rank in the army may entitle them, respectively, and are liable to be transferred, at the discretion of the President, from one corps to another, regard being paid to rank."

Military dictionaries and works describe an engineer as "an officer appointed to inspect and contrive attacks, defences, &c., of a fortified place, or to build and repair them." (*Duane*, Mil. Dic., 136.)

These references show what were Major Chase's official duties. He does not show that he had a command conferred by order of the President, or even by anybody else. Hence, it is clear that under this act of 1842 he cannot receive double rations.

SECOND. *The act of 28th September*, 1850, (9 U. S. L., 504,) *was in force only for the year ending the 30th June*, 1851, *and does not apply.*

The act of 1850 is entitled "An act making appropriations for the support of the army for the year ending the thirtieth of June, one thousand eight hundred and fifty-one."

The third paragraph is in these words:

"For commutation of officers' subsistence, five hundred and fifty-six thousand six hundred and seventy-nine dollars, including the additional rations for commissioned officers of ordnance commanding arsenals or armories, being fixed or permanent military posts of the army of the United States, and additional rations for the commissioned officers of the engineers commanding *separate and fixed or permanent posts* of the army of the United States."

This act by its terms was limited to the appropriation for a particu-

lar year, and under it Major Chase received the double rations he claimed. It cannot, by any possibility, extend to any other appropriation.

But even under that law he was not legally entitled, because he did not exercise that command which authorized it. The reasoning of Mr. Phelps is wholly unsatisfactory. He does not show that the officers to whom he refers had a "command" at all. He only says that the War Department had informed him the posts where they were stationed or employed were "permanent." Admitting that to be so, it did not show that they held an official command there when not ordered by the President. But it is now unimportant whether that decision was right or not, because that law has performed its functions and is dead, and cannot have any further effect.

It follows that Major Chase cannot lawfully receive the double rations he claims, because there is no law authorizing it.

R. H. GILLET, *Solicitor.*

SEPTEMBER 2, 1858.

IN THE COURT OF CLAIMS.

June 6, 1859.

WILLIAM H. CHASE *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

This is a claim for double rations by the claimant as a major of the corps of engineers. The time for which the claim is made is from the 23d of August, 1842, to the 16th of February, 1856, one year excepted, viz: the year commencing on the 1st July, 1850, and ending on the 30th June, 1851. There is proof that the claimant was a major in the engineer corps during said period.

It also appears that for most of the time from the 23d of August, 1842, until the 1st of July, 1851, he was stationed at Pensacola, in Florida, charged with the construction and repairs of the forts in Pensacola harbor, and the general supervision of all works of fortification on the Gulf of Mexico; that from the 1st of July, 1851, to November 1, 1854, he was stationed at Pensacola aforesaid, superintending the construction of Fort McRea, Fort Barrancas, and the barracks thereat, and with a general supervision of all works on said Gulf; that from the 16th of November, 1854, to February 16, 1856, he was at Key West, Florida, in charge of the construction of Fort Taylor, &c.; and that the above are separate, fixed, and permanent posts.

The petition states that this claim was presented to the accounting officers and to the Secretary of War, and payment refused. But that is true only as to part of the time. There is no proof of the claim having been so presented and refused for the period from the 23d of August, 1842, to the 1st of July, 1851.

The following is the claim presented to the Department by the claimant:

"Double rations, commanding Fort Barrancas, Florida, from July 1, 1851, to November 1, 1854, 1,023 days, 4 rations per day, 20 cents per ration, $818 40.

"Double rations, commanding Fort Taylor, Florida, from November 18, 1854, to February 15, 1856, 389 days, 4 rations per day, 1,556 rations, 20 cents a ration, $311 20. Amount, $1,129 60."

We think that it is perfectly clear that the claim as to the period from the 23d of August, 1842, to July 1, 1850, is without foundation. The act of Congress which governs the claim, so far as least as that period is concerned, is as follows:

"That the rations authorized to be allowed to a brigadier while commander-in-chief, and to each officer while commanding a separate post, by the act of March 3, 1797, and to the commanding officers of each separate post, by the act of March 16, 1802, shall hereafter be allowed to the following officers, and no others: to the major general commanding the army, and to every officer commanding in chief a separate army actually in the field; to the generals commanding the eastern and western geographical divisions; to the colonels or other officers commanding military geographical departments; to the commandant of each permanent or fixed post garrisoned with troops, including the superintendent of the Military Academy at West Point, who is regarded as the commandant of that post." (5 Stat. at L., 513.)

The claimant, during the last named period, as an engineer officer, was stationed at separate, fixed, and permanent posts, and was charged with the construction and repairs of forts there, and with the supervision of other works of fortification. But his having such charge does not bring him within said act of Congress, because the posts at which he was stationed were not, nor was any one of them, garrisoned with troops, over which troops he had the command.

By the army regulations of 1836 double rations were allowed certain officers, and, among others, "to the commandants of military posts and arsenals," and "to the officers of the corps of engineers, and of the topographical engineers, charged with the superintendence of fortifications and other public works, and having separate commands." The same allowance was made to those officers, and in the same words, by the army regulations of 1841. But Congress, by said act of 1842, put an end of those extra allowances to engineers for such services.

We come now to consider the claim for the period from the 1st of July, 1851, to the 16th of February, 1856.

On the 28th of September, 1850, Congress passed an act on which, with the aforesaid act of 1842, the claimant relies for this claim. If the claim for the period last above named can be supported, it must be on the said act of 1850; because the act of 1842, except so far as it may be affected by that of 1850, is as decidedly against this part of the claim as it is against the other, the facts being the same as to the nature of the service during the whole time alleged in the petition.

The said act of 1850, which is an appropriation act for the support of the army, contains the following provision:

"That the following sums be, and the same are hereby, appropriated * * * for the support of the army for the year ending the 30th June, 1851; * * * for commutation of officers'

subsistence, $550,679, including the additional rations for commissioned officers of ordnance commanding arsenals or armories, being fixed or permanent posts of the army of the United States, and the additional rations for the commissioned officers of engineers commanding separate and fixed or permanent posts of the army of the United States." (9 Stat. at L., 504.)

We need not stop to inquire whether this enactment respecting engineers is a permanent one, or is limited in its operation to the single year; because, if it be considered permanent, its operations will not benefit the claimant. One of the articles of war is as follows:

"The functions of the engineers being generally confined to the most elevated branch of military science, they are not to assume nor are they subject to be ordered on any duty beyond the line of their immediate profession, except by the special order of the President of the United States; but they are to receive every mark of respect to which their rank in the army may entitle them, respectively, and are liable to be transferred, at the discretion of the President, from one corps to another, regard being paid to rank." (2 Stat. at Large, 367, art. 63.)

Now, it is not proved, nor is there any reason to suppose, that the claimant was commanding any of the said posts by the special assignment of the President of the United States, or in any other way. Indeed, the evidence shows that he was not so commanding. He was, at the times referred to in the evidence, superintending in the capacity merely an engineer the construction and repairs of certain forts, with a general supervision of others, and that is all. The performance of such engineer duties was not the exercise by the special assignment of the President, or in any other way, of such a military command of a separate and fixed or permanent post as is contemplated by said act of 1850.

Our opinion, therefore, is, that the claimant has no cause for action.